

ANALYSIS OF ORIGINAL BILL

Author: Alpert Analyst: Paul Brainin Bill Number: SB 1741

Related Bills: None Telephone: 845-3380 Introduced Date: 02-18-98

Attorney: Doug Bramhall Sponsor:

SUBJECT: Partnerships/Dissolution/FTB Notify Taxpayer Minimum Tax Due Until
Certificate Of Dissolution Is Filed

SUMMARY

This bill would require the Franchise Tax Board (FTB) to notify limited partnerships (LPs), when they file a final return, that the minimum tax is due annually until they dissolve with the Secretary of State.

EFFECTIVE DATE

This bill would be effective January 1, 1999.

SPECIFIC FINDINGS

Current state law requires that every LP doing business in this state and required to file a return shall pay a \$800 tax for the privilege of doing business in this state.

Current state law requires every LP that has filed a certificate of limited partnership with the Secretary of State (SOS) to pay annually the tax mentioned until a certificate of cancellation is filed with the SOS, without regard to a final return being filed.

The instructions for the partnership return (Form 565) state that the annual tax of \$800 applies to (1) LPs, both foreign and domestic, that do business in California; (2) LPs that have a certificate on file with the SOS; (3) limited liability partnerships (LLPs) that do business in California; (4) LLPs registered with the SOS; and real estate mortgage investment conduits that are partnerships and do business in California. Also in the instructions, it is stated that LPs and LLPs that have a certificate on file or are registered with the SOS (whether or not doing business in California) must file a return and pay the annual tax of \$800. The instructions provide the steps to take to dissolve or cancel a LP or LLP.

Under current practice, the department notifies LPs that are coded as active (not canceled) and have missing returns of their requirement to file a return and pay

DEPARTMENTS THAT MAY BE AFFECTED:

___ STATE MANDATE

___ GOVERNOR'S APPOINTMENT

Board Position:

___ S ___ O
___ SA ___ OUA
___ N ___ NP
___ NA ___ NAR
___X___ PENDING

Agency Secretary Position:

___ S ___ O
___ SA ___ OUA
___ N ___ NP
___ NA ___ NAR
DEFER TO ___

GOVERNOR'S OFFICE USE

Position Approved ___
Position Disapproved ___
Position Noted ___

Department Director Date
G. Alan Hunter 3/30/98

Agency Secretary Date

By: Date

the annual tax of \$800, regardless of whether returns designated as final have been filed.

This bill would require the FTB to notify LPs that file returns designated as final returns that the minimum tax is due annually until they file with the SOS a certificate of dissolution or cancellation.

Policy Considerations

This bill would require only that notices about minimum tax being due annually until dissolution or cancellation be sent to LPs when they file their final tax return. Limited liability partnerships also are subject to the dissolution or cancellation process, but are not addressed in this bill.

Corporations that file final returns, but remain coded as active on department records, are notified that the minimum tax is due annually until they dissolve with the SOS as part of the tax clearance process. This bill would provide similar treatment for LPs. However, LPs, unlike corporations, are not required to obtain a tax clearance.

Implementation Considerations

This bill would cause the creation of a new form that would be generated automatically whenever a final return is filed by a limited partnership. The additional programming necessary to generate the form could be done during normal annual updates.

Technical Consideration

This bill amends section 23081 of the Revenue and Taxation Code (R&TC). This section is no longer applicable. In addition, the bill refers to a certificate of dissolution. Current law, governed by section 17935 of the R&TC, continues liability for the LP tax until a certificate of cancellation is filed. The attached amendments would correct these errors.

FISCAL IMPACT

Departmental Costs

The departmental costs associated with this bill would be minor.

Tax Revenue Estimate

This bill would likely accelerate the department's current practice of notifying taxpayers when either payment of tax or the filing of a return is delinquent, but would have no identifiable revenue impact.

BOARD POSITION

Pending.

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FRANCHISE TAX BOARD'S
PROPOSED AMENDMENTS TO SB 1741
As Introduced February 18, 1998

AMENDMENT 1

In line 1 of the title, strike out "23081" and insert:

17935

AMENDMENT 2

Strike out page 1, lines 1 through 7, inclusive, and pages 2 and 3, in their entirety, and insert:

SECTION 1. Section 17935 of the Revenue and Taxation Code is amended to read: 17935. (a) For each taxable year beginning on or after January 1, 1997, every limited partnership doing business in this state (as defined by Section 23101) and required to file a return under Section 18633 shall pay annually to this state a tax for the privilege of doing business in this state in an amount equal to the applicable amount specified in Section 23153.

(b)(1) In addition to any limited partnership that is doing business in this state and therefore is subject to the tax imposed by subdivision (a), for each taxable year beginning on or after January 1, 1997, every limited partnership that has executed, acknowledged, and filed a certificate of limited partnership with the Secretary of State pursuant to Section 15621 of the Corporations Code, and every foreign limited partnership that has registered with the Secretary of State pursuant to Section 15692 of the Corporations Code, shall pay annually the tax prescribed in subdivision (a). The tax shall be paid for each taxable year, or part thereof, until a certificate of cancellation is filed on behalf of the limited partnership with the office of the Secretary of State pursuant to Section 15623 or 15696 of the Corporation Code.

(2) If a taxpayer files a return that is designated its final return with the Franchise Tax Board, that board shall notify the taxpayer that the minimum tax is due annually until a certificate of cancellation is filed with the Secretary of State pursuant to Section 15623 or 15696 of the Corporations Code.

(c) The tax imposed under this Section shall be due and payable on the date the return is required to be filed under former Section 18432 or Section 18633.

(d) For purposes of this section, "limited Partnership" means any partnership formed by two or more persons under the laws of this state or any other jurisdiction and having one or more general partners and one or more limited partners.